



**FILED**  
Dec 31 2008, 9:20 am  
*Kevin L. Smith*  
**CLERK**  
of the supreme court,  
court of appeals and  
tax court

ATTORNEYS FOR APPELLEE:

**STEVE CARTER**  
Attorney General of Indiana

**IN THE  
COURT OF APPEALS OF INDIANA**

GENE SMITH,  
Appellant-Defendant,  
vs.  
STATE OF INDIANA,  
Appellee-Plaintiff.

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No. 49A05-0805-CR-273

APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Linda E. Brown, Judge  
Cause No. 49F10-0704-CM-73533

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**MAY, Judge**

Gene Smith appeals his conviction of Class A misdemeanor resisting law enforcement.<sup>1</sup> Finding the evidence sufficient to support his conviction, we affirm.

### **FACTS AND PROCEDURAL HISTORY**

On April 26, 2007, Indianapolis Metropolitan Police Officer Andrew Deddish initiated a traffic stop of a red pick-up truck with three occupants. When Officer Deddish turned on his lights and siren, the truck fled and a police chase ensued. The truck crashed into a garage, and the driver and a female passenger fled on foot. As Officer Deddish ran after the driver, two other officers arrived on the scene.

Officer James Martin approached the truck as the remaining passenger, Smith, was attempting to exit the driver's side door. Officer Martin announced he was a police officer and ordered Smith to get on the ground. Smith "tried to climb back in across to the passenger side of the vehicle away from me and out that side of the vehicle." (Tr. at 11.) Officer Martin grabbed Smith's leg and arm and tried to pull him out of the driver's side of the truck. As Officer Martin pulled the bottom half of Smith's body out of the truck, Smith grabbed the steering wheel and "pulled himself up." (*Id.* at 12.) Smith continued to try to pull himself back into the vehicle until "eventually [Officer Martin] was able to get his arms under control and put handcuffs on him." (*Id.*)

The State charged Smith with resisting law enforcement. After a bench trial, the court entered a judgment of conviction. The court gave Smith a one-year sentence with 165 days suspended.

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<sup>1</sup> Ind. Code § 35-44-3-3.

## DISCUSSION AND DECISION

Our standard of review for sufficiency of evidence questions is:

When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences *supporting* the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

*Drane v. State*, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations, citations, and footnote omitted) (emphasis in original).

The State charged Smith under Ind. Code § 35-44-3-3(a), which provides a person commits resisting law enforcement if he knowingly or intentionally “forcibly resists, obstructs, or interferes with a law enforcement officer or a person assisting the officer while the officer is lawfully engaged in the execution of the officer’s duties.” Our Indiana Supreme Court has defined “forcible resistance” to mean “strong, powerful, violent means are used to evade a law enforcement official’s rightful exercise of his or her duties.” *Spangler v. State*, 607 N.E.2d 720, 723 (Ind. 1993).

In arguing the evidence is insufficient to support his conviction, Smith ignores the evidence most favorable to his conviction and instead argues he “simply waited in the truck.” (Appellant’s Br. at 7.) The evidence favorable to the judgment is that after receiving the order to lie on the ground, Smith attempted to crawl back through the truck. As Officer Martin attempted to pull Smith from the truck, Smith struggled against him,

using the steering wheel to pull himself back into the truck. This evidence is sufficient to demonstrate forcible resistance, and we affirm his conviction.

Affirmed.

NAJAM, J., and ROBB, J., concur.